No. 82-2126

Office-Supreme Court, U.S.
FILED
AUG 8 1983
ALEXANDER L. STEVAS,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MARRIOTT IN-FLIGHT SERVICES, A DIVISION OF MARRIOTT CORPORATION,

Petitioner,

—against—

NATIONAL LABOR RELATIONS BOARD and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KEVIN P. QUILL
Counsel of Record
Chase Manhattan Building
29-27 41st Avenue
Long Island City, New York 11101
(212) 786-5299

JOSEPH P. MANNERS
Machinist Building
1300 Connecticut Avenue, NW
Washington, DC 20036
(202) 857-5250

Attorneys for Respondent International Association of Machinists and Aerospace Workers, AFL-CIO

QUESTIONS PRESENTED FOR REVIEW

1. Whether there is substantial evidence in the record to support the decisions and orders of the National Labor Relations Board warranting enforcement.

2. Whether the Petitioner was negotiating in bad faith in violation of &8(a)5 of the National Labor Relations Act.

3. Whether there was a legal impasse on May 17, 1979 when the Petitioner unilaterally implimented changes in working conditions.

4. Whether the Petitioner was violating &8(a)(1) and (5) National Labor Relations Act in withdrawing recognition of the International Association of Machinists & Aerospace Workers on October 12, 1979 and refusing to negotiate.

5. Whether the Petitioner's involvement in originating, encouraging, sponsoring and assisting the decertification drive violate &8(a)(1) and (5) National Labor Relations Act.

6. Whether the Petitioner is engaging in dilatory tactics to avoid its obligations under the National Labor Relations Act by petitioning for a frivilous appeal.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW..... i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iii

STATUTES INVOLVED 1

STATEMENT OF THE CASE..... 2

REASONS FOR DENYING THE WRIT..... 12

I. The National Labor Relations Board.... Properly found the Petitioner violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act..... 12

II. There is Substantial Evidence in the Record to Support the NLRB Orders 21

III. The Petitioner is Engaging in Dilatory Tactics in Petitioning For Certiorari.....23

CONCLUSION 25

CERTIFICATE OF SERVICE 26

TABLE OF AUTHORITIES

Cases: Page

Brooks v. NLRB
348 U.S.96 (1954)..... 21

Cain's Generator & Armature Co.,Inc. v. NLRB
628 F.2d 933 (6th Cir. 1980)..... 20

Carpenter Sprinkler Corp. v. NLRB
605 F.2d 60 (2d Cir. 1979)..... 22

Charles D.Bonanno Linen Service Inc. v. NLRB
434 F.2d 1069 (8th Cir 1970), cert den. 401 U.S.
1009.....23

Cheney California Lumber Co v. NLRB, 319 F2d
375 (9th Cir 1963).....13

Continental Insurance Co. v. NLRB 459 F2d 44
(2nd Cir 1974).....13

Glomac Plastics Inc. v. NLRB 592 F2d 94
(2nd Cir. 1979).....13.22.23

Kellwood v. NLRB, 434 F2d 1069 (8th Cir 1970).....23

NLRB v. All Brands Printing Corp., 594 F2d 926
(2d Cir 1979).....21

NLRB v. Century Cement Mfg.Co., 208 F2d 84
(2d Cir 1953).....15

NLRB v. General Electric Co,, 150 NLRB 192, enf'd
418 F2d 736 (2d Cir 1969), Cert. Den 397
U.S. 965.....13

NLRB v. Herman Sausage Co. 275 F2d 229 (5th Cir 1960).....15

NLRB v. Hommes Tuttle Broadway Ford, 465 F2d 717 (9th Cir. 1972).....15

NLRB v. Insurance Agents Union, 361 U.S. 477 (1960).....12,21

NLRB v. Katz, 369 U.S. 736 (1962).....13

NLRB v. Koenig Iron Works Inc., 681 F2d 130 (2d Cir 1982).....18,20,22,23

NLRB v. Maywood Plant of Crede Plastics, 628 F2dl (2d Cir. 1980).....19,20,22

NLRB v. Milco, Inc., 338 F2d 1933 (2d Cir 1968)..18

NLRB v. Orion Corp., 515 F2d 81 (7 Cir 1975) 19,23

NLRB v. Patent Trader Inc., 415 F2d 190 (2d Cir 1969).....15

NLRB v. Reed and Priest Mfg. Co., 205 F2d 131 (1st Cir 1953)..... 13

NLRB v. Silver Spur Casino, 623 F2d 571 (9th Cir. 1980) cert. denied 451 U.S. 906.....19

NLRB v. Tahoe Nugget, Inc. 584 F2d 293 (9th Cir. 1978) 19

NLRB v. Truitt Mfg. Co., 351 U.S. 149(1956) 12

NLRB v. Windham Community Memorial Hospital 577 F2d 805 (2d Cir. 1978).....16,18,20,22, 23

New York Printing Pressmen & Offset Workers v. NLRB, 538 F2d 496 (2d Cir 1976).....15

N.T. Enloe Memorial Hospital v. NLRB, 682 F2d 790 (9th Cir 1982).....19,23

Queen Mary Restaurants Corp v. NLRB, 560 F2d 403 (9th Cir, 1977).....18,23

Retired Persons Pharmacy v. NLRB, 519 F2d 486 (2d Cir 1975) 19

Taft Broadcasting Co., 136 NLRB 474 (1967).....14

Sahara-Tahoe Corp v. NLRB, 581 F2d 767 (9th Cir 1978) cert., den. 442 U.S. 917.....20

Strauss Communications Inc. v. NLRB, 625 F2d 458, (2d Cir 1980).....20

Universal Camera Corp. v. NLRB 340 U.S. 474 (1950).....12,21,23

Statutes:

29 U.S.C. &158(a)(1) passim
29 U.S.C. &158(a)(5) passim
29 U.S.C. &157 .....

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

MARRIOTT IN-FLIGHT SERVICES,
A Division of Marriott Corporation,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO,

Respondents.

REPLY BRIEF IN OPPOSITION TO CERTIORARI BY RESPONDENT INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO.

STATUTES INVOLVED

The statutes involved are 29 U.S.C.&& 157 et seq.

STATEMENT OF THE CASE

NATURE OF THE CASE

This case involves the review of the record in the administrative determinations of the National Labor Relations Board which ruled the Petitioner engaged in bad faith collective bargaining, unilaterally changed working conditions of employees, sponsored and originated a decertification petition, withdrew recognition of the International Association of Machinists & Aerospace Workers as the representative of the employees. The issue is whether there is substantial evidence to support the determinations. The Petitioner seeks to narrow the issue to the Board finding the Respondent guilty of &8(a)(1) and (5) National Labor Relations Act violations based on the refusal of the Respondent to agree to union security and checkoff demands. The NLRB findings were broader and were based on numerous factual incidents involving the employer's desire not to reach an agreement,unilaterally changing terms and working conditions interferring in the employees' Section 7 rights and withdrawing recognition of the union as the collective bargaining agent without a valid basis.

The question of what constitutes substantial evidence to support the NLRB's decisions has been before the Court on numerous occasions in similar cases. The Court has established the standards the NLRB Board must meet for enforcement. It is readily ascertainable from reviewing the record that the Board did have substantial evidence to justify the decisions and thus the Court should grant enforcement.

STATEMENT OF FACTS

The International Association of Machinists and Aerospace Workers, AFL-CIO, (hereinafter the Union) was certified as the exclusive representative of the employees at the Marriott In-Flight (hereinafter Company) facilities at Kennedy and La Guardia Airports on September 27,1978. Negotiations commenced for a contract on October 20, 1978 with the Union represented be Local Lodge President Coughlin and Chief Negotiator Connolly and the Company by attorney CJ Trosclair and Regional

Vice President Lammers. The parties agreed that non-economic issues would be discussed before economic issues. The Union supplied the format for a contract. The Union at the next meeting supplied a contract outline including provisions for union security and check off along with other items. The Company supplied a contract proposal at the next meeting which did not include union security or checkoff provisions.

At a meeting on December 5, the Company informed the Union of a dental plan it was putting into effect countrywide and wanted to impliment in New York. The Union reserved the right to bargain over the plan. The Company also wanted to impliment insurance and funeral leave plans. All of these items were put into effect on January 1, 1979. The parties continued to meet with the only statement about wages being by Connolly that the Union was not looking for the wage rates of airline employees but rather the rates of the catering companies. On January 30, 1979, Gene White, Vice President of Personal Relations, became part of the Company's negotiating team. The parties continued to discuss the non-economic issues

until March 20 when the issue of the annual April wage increase was raised. The Company, at the next meeting on March 29, mentioned the increase was to be 8% and that the Company wished to impliment the increase forthwith. Connolly initially objected but agreed to reserve the right to bargain on the wage increase in future negotiations. The Company implimented the 8% increase on April 1, 1979.

On April 24, the Company agreed to an overtime proposal which it was putting in effect countrywide as of May 12. The Company notified its New York employees of the agreement and invited questions. At the April 25 meeting Gene White rejected the union shop, union security and checkoff proposals of the Union stating "these items at this time might not be necessary because of the closeness of the election". On April 30, Trosclair said the Company was not going to move any further despite there having been no discussions on wages, union shop or checkoff. Connolly said he would consider the Company's position and

called the Federal Mediation & Conciliation Service to secure a Federal mediator, who did appear at the next meeting on May 8. The Company published and distributed an article to the employees which falsely stated the union agreed to the implimentation of the overtime proposal. At the May 8 meeting Trosclair repeated the Company was not moving on the contract proposals. On May 9, Trosclair sent the Union a telegram offering to impliment the overtime proposal. The Company on May 10 issued a notice to the employees of its offer and the Union not accepting it. At the May 16 negotiating session Vice President White stated the Company wanted to impliment the overtime proposal and Connolly objected.

At the May 17 meeting the Company agreed to the Union proposal for free meals for employees. Trosclair rejected the union security proposal stating the Company did not feel the Union had employee support. Trosclair said the Company was not going any further on contract terms. Connolly said the Union would consider the Company proposals but there were still open items and the Union would contact the Federal

Mediator to set up future negotiating dates. As of May 17 wages, checkoff and union security had not been discussed. On May 24, the Company issued a memo to its employees that the Union hadn't agreed to the overtime implimentation but that the proposals were fair and equitable. On May 31, the Company sent a telegram to the Union stating that an impasse had occurred on May 17 and the Company was implimenting the free meals and overtime proposals as of June 2. On June 1, the Company notified the employees of an impasse and the implimentation of the benefits.

The issue of a strike arose at the negotiating sessions. The Union called a meeting to decide whether to strike but never did authorize a strike nor did the employees actually strike.

The parties resumed negotiating on July 10 and the Company issued a proposed contract which stated on the front page that economic issues would be discussed in the future. On July 26, the Union reduced the union shop demand to a maintainance of membership offer. White, on August 16, stated he was opposed to the maintainance of membership

proposal because the Company did not feel the Union had majority support. On August 27, Trosclair stated the Company wanted the Union to accept the contract proposed by the Company, which did not contain wage increases or union security. Connolly replied there were many open items including the dates for the duration of the contract. Connolly suggested the Union Air Line Co-Ordinator, William Scheri, meet with Marriott officials in Washington D.C. to resolve the open items and Vice President White agreed. The meeting took place in Washington in September and the issues of wages and Union security were discussed along with checkoff but no agreement was reached. Scheri contacted Coughlin and Connolly and told them to go back into negotiations and wrap up the open items. Coughlin called White and set up a meeting for October 2. Upon arriving at the hotel room Connolly objected to negotiating in a bedroom and Trosclair said he understood the meeting was just for the signing of the contract and the Company wasn't there to negotiate. No negotiations took place; however, the parties agreed to meet on October 9 to negotiate. On October 9, the Company presented

a one year contract proposal which the Union agreed to and requested the dates for which the contract would be efective so the employees would know about their future wage increases. Gene White said he would have to consult with his superiors in Washington and refused to negotiate any further despite Connolly's demand that White telephone Washington for an answer. The parties agreed to meet again on October 15 to finalize the contract.

Simultaneously with the negotiating session on October 9, Vice President Jeff Lammers held a meeting with the local company managers in which he informed them that meetings were going to be held for the employees to explain how to decertify the Union and booklets would be distributed explaining decertification of the union. The Company made a decision after October 2 when the Union wouldn't sign the contract to push the decertification meetings and distribution of the booklets. Coughlin asked White at the October 9 meeting about Company involvment in decertifying the Union and White denied any involvment responding that the Company

wanted a contract.

At the Company meetings with the employees held on October 10, 11, 12, on Company time and on Company property a speech was read to the employees. The speech had been authored by Company attorney, Trosclair, and authorized by a Company official at Marriott headquarters in Washington, D.C. The Company posted a notice to the employees to attend the meetings for an updated status of the contract negotiations. An official of Marriott from Washington was introduced at each meeting where the decertification speech was given in English and Spanish by the local manager and the booklet was supplied containing petitions to decertify the Union. Juan Corrado, a local manager, gave a speech in Spanish in which he insisted the employees sign the decertification petition and questioned why the employees were involved with union.

On October 12, Bruce Withrow, a maintainance employee in the certified unit, filed a decertification

petition in Region 29 of the National Labor Relations Board. The petition forms were those supplied by the Company at the meetings with the employees. Withrow had attended an October 10 meeting at which the Company gave out the decertification petitions. Withrow testified he and other employees, who he would not identify, obtained 416 signatures in slightly more than a day; his work shift ran to 4:30 p.m. and the Company meeting at which he learned he could file the petition was held between 1:00 to 2:00 p.m. On October 12 the Company posted a notice to the employees that a decertification petition had been filed with the NLRB. Gene White called Connolly and told him that a decertification petition had been filed and the Company was cancelling the scheduled October 15 meeting because there was a question concerning the Union's majority status. White said to Connolly the Union "blew it". The Company refused to negotiate thereafter

despite requests by the Union.

REASONS FOR DENYING THE WRIT

1. THE NATIONAL LABOR RELATIONS BOARD PROPERLY FOUND THE PETITIONER VIOLATED Sections 8(a)(1) and 8(a)(5) of the NATIONAL LABOR RELATIONS ACT.

An employer has an obligation to bargain in good faith with the collective bargaining representative under Sections 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. &158(a)(5) and (1). "Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims." NLRB v. Truitt Mfg. Co., 351 U.S. 149, 152 (1956). In judging a party's compliance with Section 8(a)(5) a party must have a real desire to come to an agreement, NLRB v. Insurance Agent's Union, 361 U.S. 477, 498 (1960). This determination of good faith bargaining is made by drawing inferences from the conduct of the parties as a whole. Universal Camera Corp, v. NLRB, 340 U.S. 474 (1950);

NLRB v. Reed and Priest MFG CO., 205 F2d 131 (1 Cir. 1953); Continental Insurance Co., v. NLRB, 495 F2d 44 (2d Cir. 1974); Glomac Plastics Inc. v. NLRB, 592 F2d 94 (2d Cir. 1979); Cheney California Lumber Co. v. NLRB, 319 F2d 375 (9th Cir. 1963).

There are numerous factors which can be looked at concerning good faith bargaining. NLRB v. General Electric Co., 150 NLRB 192; enf'd 418 F2d736 (2d Cir. 1969), cert. denied 397 U.S. 965.

The essential element being an intent to adjust differences and reach an acceptable ground by considering and exploring all issues with an open mind. An examination of the facts in the instant case as set forth in the NLRB's decisions reveals the Company lacked the required intent to bargain in good faith

It is a violation of &8(a)(5) to unilaterally impliment changes in working conditions during negotiations unless an impasse exists. NLRB v. KATZ

369 U.S. 736 (1962); Taft Broadcasting Co. 164 NLRB 474 (1967); NLRB v. General Electric Co. 418 F2d 736 (2d Cir. 1969) cert. den. 397 U.S. 965.

The record shows that the Company implimented the overtime and free meal proposals which had been agreed to by the parties when no impasse existed. The Company bases its position for implimenting the changes on the grounds an impasse existed at the May 17, 1979 meeting in which Trosclair, the Company attorney, told the Union that the Company's contract proposal was a final offer. The Company's position is ill founded as Connolly, the Unionspokesman, stated the Union would consider the proposal and get in touch with the Company, a fact admitted to by Gene White, the Company Vice President. The Company issued a bulletin to the employees on May 24 that the overtime and meal issues had not been resolved thereby implying that negotiations were still open and on going. It was on May 31 that the Company asserted for the first time that an impasse had been reached

two weeks earlier and then the Company rationalized the implementation of the benefits on June 1 based on its self proclaimed impasse.

At the time of the Company's final offer on May 17 there had been no negotiations on numerous important issues including wages, union security and checkoff. The Company was giving a "take it or leave it" offer which is a violation of &8(a)(5). If there was an impasse then the impasse was not legal since the Company had been bargaining in bad faith thereby nullifying the impasse as a grounds to impliment benefits NLRB v. Holmes Tuttle Broadway Ford 4652d 717 (9 Cir. 1972); NLRB v. Herman Sausage Co., 275 F2d 229 (5th Cir. 1960), NLRB v. Century Cement Mfg. Co., 208 F2d 84 (2nd Cir 1953); NLRB v. Patent Trader Inc., 415 F2d 190 (2d Cir 1969); New York Printing Pressmen & Offset Workers v. NLRB, 538 F2d 496 (2nd Cir. 1976).

The Company also misrepresented that the

Union had agreed to the implimentation of the overtime in a bulletin to the employees. The Company by issuing its bulletins was dealing directly with the employees rather than with their certified representative to erode the Union position with the employees. The content and tone of the bulletins readily demonstrate the Company's illegal conduct.

The Company took an intransigent position on May 17 when important matters had not yet been discussed. The Company was not bargaining with the intent to reach agreement when it had not discussed all the issues.

During negotiations the Company representatives questioned the status of the Union within the first year of certification and used that issue to deny the checkoff and union security demands of the Union. This conduct is hardly consistent with good faith bargaining. NLRB v. Windham Community Hospital, 577 F2d 805 (2d Cir. 1978) The Company refused to

negotiate on October 2 and refused to finalize the contract on October 9. During the October 2 bargaining meeting the Company was simultaneously holding another meeting on how to decertify the Union, definite evidence of bad faith bargaining. The Company misled employees to induce their attendance at the decertification meetings which were held on Company time and in a captive audience situation. The Company supplied booklets and petitions, which were actually used in the decertification drive. The Company only had inquiries from a few employees at most about the majority status of the Union and definitely not a sufficient number to constitute a valid basis to have a good faith doubt about the Union's majority status. The Company's cancellation of the October 15 bargaining session was based solely on the filing of the decertification petition as stated by Vice President White.

All of these facts show more than a hard bargaining position by the Company which was engaged in surface bargaining with no intent to treat with the Union. The Company was unequivocally not bargaining in good faith. Queen Mary Restaurants Corp. v. NLRB, 560 F2d 403 (9th Cir. 1977); NLRB v. Milco Inc. 338 F2d 133 (2d Cir 1968).

The issue of what grounds an employer can rely on to establish a good faith doubt as to a union's majority status has been clearly established. In the most recently reported case, the Second Circuit in NLRB v. Koenig Iron Works Inc., 681F2d 130 (2d Cir 1982), reaffirmed the criterion enunciated in NLRB v. Windham Community Memorial Hospital, supra 811.

> "Following the expiration of the certification year, the presumption remains in effect but becomes rebuttable..... To rebut the presumption by establishing its good faith doubt, the employer must present clear and convincing evidence of loss of union support capable of raising a reasonable doubt of the Union's continuing majority."

In Koenig the Second Circuit stated at p 317

> "Given the danger that assertions of good faith defense would pose to the stability of the collective bargaining process if not carefully scrutinized, cite omitted, companies relying on the defense must come forward with easily verifiable and unambiguous evidence supporting their belief that their employees have rejected the incumbent union as a bargaining agent. Thus the employer has the burden of producing "clear and convincing evidence of loss of union support," Retired Persons Pharmacy v. NLRB, supra 519 F2d at 489-90, Nazareth Regional High School v. NLRB, 549 F2d 873, 880 (2d Cir 1977)

See also NLRB v. Orion Corp., 515 F2d 81(7Cir 1975); Retired Persons Pharmacy v. NLRB, 519 F2d 486 (2d Cir 1975); NLRB v. Silver Spur Casino, 623 F2d 571 (9th Cir. 1980); cert. den 451 U.S. 906

An employer may not stop bargaining when a decertification petition is filed especially when the Company contributed to the decertification drive. N.T. Enloe Memorial Hospital v. NLRB, 682 F2d 790 (9th Cir 1982); NLRB v. Maywood Plant of Grede Plastics, 628 F2d1 (2nd Cir 1980); NLRB v. Tahoe Nugget, Inc., 584 F2d 293 (9th Cir 1978)

There was no testimony that the Company knew the

number of signatures filed at the Board so there could not have been a good faith doubt as to the union majority status. Cain's Generator & Armature Co., Inc v. NLRB, 628 F2d 933 (6th Cir 1980). The inquiries from employees concerning the status of the union numbered no more than 6 or 7 out of a unit in excess of 750. The so called strike threats, if they in fact were made, and change in bargaining status do not constitute the basis for a good faith doubt. All of the reasons advanced by the Company fall far short of clean, convincing and cogent evidence. Sahara-Tahoe Corp. v NLRB, 581 F2d 767 (9th Cir 1978), cert denied 442 U.S. 917; NLRB v. Maywood Plant of Grede Plastics, supra; NLRB v. Koenig Iron Works Inc., supra; NLRB v. Windham Memorial Hospital, supra; Strauss Communications Inc. v. NLRB, 625 F2d 458 (2nd Cir 1980).

If the Employer had a good faith doubt as to the majority status of the Union, it must bargain or take action by filing a petition on its own.

NLRB v. All Brands Printing Corp., 594 F2d 926 (2nd Cir 1979); Brooks v. NLRB, 348 U.S. 96 (1954) Under the facts in the instant case the Company was actively involved in the decertification drive, which the Company describes as a "lightning move". The creditability of the Company is stretched beyond all limits as to its good faith doubt of the Union's majority status. The finding of the Board as to the participation of the Company in the decertification drive is well documented as is the violation of the Section 7 rights of the employees to be free from interference in the choosing of their representative.

II THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE NLRB ORDERS

The Supreme Court has repeatedly enunciated the standard of review which the Courts are bound by in reviewing the NLRB's orders. In NLRB v. Insurance Agents, supra; Universal Camera v. NLRB, 454 U.S. 404 (1982), the Supreme Court has held

that the review is limited to whether there is substantial evidence to support the Board determination and where there is such evidence the Courts must defer to the Board's recognized expertise. Windham Hospital, supra, Koenig Iron Works, Inc., supra, and Glomac Plastics, Inc., supra, Maywood Plant, supra.

In reviewing the record on which the Board made its decision, there is more than ample support for the Board's orders. The Board had specific testimony and documentary evidence on which to base its findings. There were several grounds for finding the bad faith bargaining throughout the bargaining sessions, ranging from the improper questioning of the Union's majority status during the certification year, to the Company refusing to sign the contract at the October 9 bargaining session. The evidence on impasse and direct dealing with the employees to undermine the Union is spread across the record. Carpenter Sprinkler Corp. v. NLRB., 605 F2d 60 (2d Cir. 1979) The involvement of the Company

in sponsoring and supporting in the decertification petition is well documented.

The determination of the Board once there is substantial evidence falls within the Board's expertise and even if the Court disagrees with the Board's conclusion it must sustain the Board. Clomac Plastics, supra ; Bonnono Linen Service Inc., supra; Koenig Iron Works Inc., supra; Universal Camera Corp., Windham Hospital, supra; Queen Mary Restaurant Corp., supra; Enloe Memorial Hospital, supra; Kellwood v. NLRB, 434 F2d 1069 (8th Cir 1970), cert. denied 401 U.S. 1009; Orion Corp., supra. As there is substantial evidence to support the Board's orders, the Court should enforce them.

III. THE PETITIONER IS ENGAGING IN DILATORY TACTICS IN PETITIONING FOR CERTIORARI.

A review of the chronology in the history of the relationship between the Petitioner and the International Association of Machinists & Aerospace Workers reveals substantial time delays. After a hard fought and

bitter election the Union was finally certified on September 27, 1978, some five years ago. The Petitioner has bargained in bad faith and violated its obligations under the National Labor Relations Act. It has taken continuous action to avoid its obligations to bargain in good faith with the Union.

The Second Circuit Court of Appeals commented in its decision that it "would decry Marriott's appeal in this case as another instance whereit has imposed dilatory impediments in the way of negotiations." The Second Circuit cast equal blame for the appeal delay on the NLRB; however, after the Second Circuit's decision Marriott engaged in further delaying tactics. Marriott petitioned for a rehearing in banc which was denied on May 2,, 1983. Marriott then waited until the time period was almost exhausted to file the petition for writ of certiorari. It is clear that Marriott is following the same path that J.P. Stevens used previously but has since abandoned.

There is no basis for an appeal and Marriott is

seeking to subvert the National Labor Relation Act. The Court should impose sanctions against Marriott for its actions.

CONCLUSION

The NLRB's orders in this case have been based on substantial evidence and the petition for a writ of certiorari should be denied.

Respectfully submitted,

KEVIN P. QUILL, ESQ.
Chase Manhattan Bank Building
29-27 41st Avenue
Long Island City, New York

JOSEPH P. MANNERS, ESQ.
Machinists Building
1300 Connecticut Avenue
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I, KEVIN P. QUILL, hereby certify that I have on August 5, 1983, by United States Mail, postage prepaid, served three (3) copies of the foregoing petition upon all parties required to be served, their names and addresses being as follows:

Samuel M. Kaynard
Regional Director, Twenty-Ninth Region
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

Carlton J. Trosclair
Attorney for Petitioner
Marriott Corporation
10400 Fernwood Road
Bethesda, Maryland 20058

KEVIN P. QUILL